

## **PERMIT FEE LIMITS, CLARIFICATIONS, AND BONDS FOR WORK IN RIGHT-OF-WAY**

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**House Bill 5097 reported from committee as substitute H-2**  
**Sponsor: Rep. Beth Griffin**  
**Committee: Communications and Technology**  
**Complete to 12-12-17**

Analysis available at  
<http://www.legislature.mi.gov>

**BRIEF SUMMARY:** House Bill 5097 would amend Public Act 283 of 1909 (the county road law) to set fee limits for projects within the right-of-way of a county road. The bill also would require either a security or right-of-way bond to secure the performance allowed in a permit authorizing the project in the right-of-way. Finally, the bill would require that a provider maintain general liability insurance.

**FISCAL IMPACT:** House Bill 5097 would have no fiscal impact on state government. The bill's impact would be limited to local government, specifically county road agencies (county road commissions and those county governments that have assumed the powers and duties of road commissions: Wayne, Macomb, Ingham, Calhoun and Jackson).

### ***THE APPARENT PROBLEM:***

It is often necessary for utilities, construction firms, and others to work within county road rights-of-way in order to lay pipelines, construct drains, or install or repair telecommunication equipment. Public Act 212 of 1980 added Section 19b to Public Act 283 of 1909 (the county road law) to require that private entities or public agencies working in the county road right-of-way first obtain a permit from a county road commission, as well as from the city, village, or township in which the road is located if those other governmental units require such a permit.

Section 19b currently allows a county road commission, and a local unit of government, to establish reasonable permit requirements and “a schedule of fees to be charged sufficient to cover only the necessary and actual costs applied in a reasonable manner for issuing the permit and for review of the proposed activity, inspection, and related expenses.”

Subsection (4) of Section 19b currently limits the permit fee that a county road agency can charge a “government entity” to \$300 per permit or \$1,000 total for all permits per project. This maximum permit fee for governmental entities has not been adjusted since Public Act 212 of 1980 took effect in early 1981 and does not include charging an internet service provider.

Because there is little regulation over charging internet service providers for placing poles or lines in an established right-of-way, some communities in Michigan have been charging exorbitant fees to the providers. House Bill 5097 would cap the fees a government is allowed to charge a provider, as well as add other mandates to help protect a local government from any harm that may arise within the right-of-way as a result of the provider’s actions.

## ***THE CONTENT OF THE BILL:***

### **Current Provisions**

Currently, a person, partnership, association, corporation, or governmental entity needs a permit from the appropriate county road commission before they can construct, operate, maintain, or remove a facility or perform any other work within a county road right-of-way. A county road commission and a local unit of government may set the permit requirements and fees. When a road commission adopts permit requirements and fee schedules, it must also set separate permit procedures and fees for annual and emergency permits. However, a county road commission cannot refuse a permit requested by a government entity that promises to restore the road, appurtenances, and adjacent right-of-way. Additionally, a county road commission is not allowed to require a permit for other lawful activities.

### **Permit Fees**

The bill would direct that a county road commission cannot charge a government entity or provider a permit fee of over \$300 per permit, or \$1,000 total for all permits per project. [Under current law, this limitation on permit fees only applies to permittees who are government agencies.] In a county with a population of more than 500,000, the road commission could charge a provider a permit fee of not more than \$600 per permit, or \$2,000 total for all permits per project.

The bill would add that a county road commission *cannot* require a provider to obtain a permit for performing routine maintenance or repair work in a right-of-way *more than once per year*. The fee for the annual permit would be capped at \$300, or \$600 in a county with a population of more than 500,000, and would be separate from the above fee limitations.

The bill also would prohibit a county road commission from requiring a provider to perform or pay for any topographic, boundary, environmental, or other kind of survey, study, inspection, or analysis of a right-of-way as a condition of or in connection with issuing a permit. However, a county road commission could require a provider to submit detailed engineering plans relating to the work in the right-of-way.

### **Bonds**

The bill would add that a county road commission cannot require a provider to have more than 1 security bond or right-of-way bond from a state or federally regulated entity licensed to do business in this state. However, if there is a claim made against the bond, the provider would have to provide the county road commission with another security bond or right-of-way bond to continue working in that county. The bonds would act to secure the performance allowed in a permit authorizing the project in the right-of-way. A county road commission cannot require a cash bond, so the provider would determine whether the security bond or right-of-way bond would be an insurance bond or a cash bond.

The amount of a security bond or right-of-way bond could not exceed \$20,000, or \$40,000 in a county with a population of more than 500,000, and would have to be returned within 60 days after the provider completes the work in the right-of-way.

A provider could provide an irrevocable letter of credit issued by a state or federally regulated financial institution licensed to do business in this state as alternative security, instead of the bonds.

### **Insurance**

The bill would require a provider to maintain general liability insurance with minimum policy limits of \$2.0 million per occurrence for property damage, and \$2.0 million per occurrence for bodily injury for all actions arising in connection with the right-of-way work.

### **Separate, Voluntary Agreement**

Despite the requirements set forth above, a county road commission, in a county with a population of more than 500,000, and a provider may still enter into a voluntary agreement regarding right-of-way access that includes different terms and conditions than those required.

### **Definitions**

Under the bill, “provider” would mean either of the following:

- A telecommunication provider as defined in MCL 484.2102(ee) (a person who provides 1 or more telecommunication services for compensation; it does not include a provider of commercial mobile service defined in 47 USC 332(d)(1)).
- A video service provider as defined in MCL 484.3301 (a person authorized under the Uniform Video Services Local Franchise Act to provide video service).

Finally, the bill would make stylistic changes for clarity and to update references.

MCL 224.19b

### ***FISCAL INFORMATION:***

Subsection (4) of Section 19b currently limits the permit fee that a county road agency can charge a “government entity” to \$300 per permit or \$1,000 total for all permits per project. House Bill 5097 would generally extend this limitation on permit fees to “providers,” as defined in the bill. The proposed substitute would establish higher permit fee limits in counties with a populations greater than 500,000. Specifically, the bill would authorize road commissions in counties with populations greater than 500,000 to charge providers up to \$600 per permit or \$2,000 total for all permits per project.

The bill would also prohibit a county road commission from requiring a provider to obtain a permit for performing routine maintenance or repair work in a right-of-way more than once per year. The fee for the annual permit would be capped at \$300, or \$600 in a county with a population of more than 500,000.

There are four counties in the state with a 2010 Census population greater than 500,000: Wayne, Oakland, Macomb, and Kent.

Subsection (2) of Section 19b currently authorizes county road commissions and local units of government to adopt permit fees “sufficient to cover only the necessary and actual costs applied in a reasonable manner for the issuance of the permit and for review of the proposed activity, inspection, and related expense.” The subsection also requires that, after permit work has been completed, an itemization of all costs be provided, on request, to the permit holder.

In limiting the amount of permit fees that road commissions could charge providers, the bill could reduce local road commission revenue from permit fees, and could increase unreimbursed costs.

The amount of the revenue loss would be localized and would occur in those instances in which the actual costs of road commission permit work exceeded the permit fee limits established in the bill. The bill's impact would likely be greatest in relation to large complex telecommunication or video service projects within the road commission right-of-way, and more particularly within urban environments—projects that potentially require higher levels of road commission review and oversight.

### ***ARGUMENTS:***

#### ***For:***

Supporters of the bill argue that Michiganders are suffering because some local governments in Michigan charge excessive fees to internet service providers. These localities make it impossible for providers to service these areas, usually leaving the residents without adequate, affordable, or even any, access to needed internet services. Additionally, uniform fees across the state ensure that all providers are treated and charged equally.

#### ***Against:***

Critics of the bill argue that most of the high fees charged to internet service providers are fair. This is because the fees are set at a certain rate to ensure that the local governments are able to recoup any costs related to fixing the right-of-way, especially if a different service line is damaged during the process. Without the ability to charge certain fees, the future risk and potential costs shift from the providers to the local governments. Local governments are less likely to have funds available to cover the expenses, which could result in ultimately putting the costs on the local residents.

Opponents of the bill also argue that the requirement to return a bond within 60 days of the completed work could harm local governments. Depending on the time of year, 60 days after a completed project could be in the middle of winter. Snow and ice would make it impossible to see if the work was done sufficiently, or if there was any damage to certain utilities or portions of the road. If local governments are required to return the bond before they have the ability to properly inspect the right-of-way, then they would have to pay for any necessary repairs once the snow thaws. Again, local governments are less likely to have the funds for such repairs and these risks should stay with the provider, not the local governments.

#### ***Response:***

Supporters have responded to this critique by pointing out that local governments would still have legal remedies to require providers to pay for any damages within the right-of-way. Additionally, money is not required for a bond on the work done in the right-of-way under the current law or under the bill. Costs could be recouped in a lawsuit or through insurance payouts, and licensures could be revoked if providers are negligent.

## ***POSITIONS:***

Representatives from the following entities indicated support for the bill:

- Michigan Cable Telecommunications Association (10-24-17)
- Telecommunications Association of Michigan (10-24-17 and 12-5-17)
- Frontier Communications (10-24-17)
- Michigan Internet and Telecommunications Alliance (10-24-17)
- Advanced Communications and Data (ACD) (10-24-17)
- Free State Foundation (10-24-17)
- Mackinac Center (10-24-17)
- T-Mobile, USA (10-31-17)
- Americans for Prosperity (10-31-17)

A representative from the Oakland County Road Commission was neutral on the H-2 substitute version of the bill. (12-5-17)

Representatives from the following entities indicated opposition to the bill:

- Michigan Association of County Drain Commissioners (10-24-17)
- County Road Association of Michigan (10-24-17)
- Washtenaw County Road Commission (10-24-17)
- Wayne County (10-24-17)
- Michigan Association of Counties (10-24-17)
- Michigan Townships Association (10-24-17)
- Conference of Western Wayne (10-24-17)
- Michigan Broadband Cooperative (10-24-17)
- Michigan Municipal League (10-24-17)
- Genesee County Road Commission (10-24-17)
- Electro-Sensitive People of Michigan (12-5-17)
- St. Clair, Huron, Lapeer, and Genesee County Road Commissions (12-5-17)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.